



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUN 14 2013

Mr. Marvelle Moore  
Alston & Bird, LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309

**RE: Freedom of Information Act Case No. EPA-R4-2013-006186**

Dear Mr. Moore:

This letter is in response to your Freedom of Information Act (FOIA) request of April 30, 2013, regarding the Northeast Lagoon site located in Florida. Specifically, you requested copies of all responsive records that were not previously produced on September 20, 2012.

After reviewing all requested records with an eye toward disclosure, we are unable to provide you with documents and portions of documents, which have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. § 552 (b)(5). Enclosed you will find an index of exempt records. The fees for processing this request are waived as de minimis.

Exemption 5 of the FOIA protects inter-agency or intra-agency memorandum or letters which would not be available by law to a party other than an agency in litigation with the agency. Courts have construed this somewhat opaque language to exempt those documents, and only those documents that are normally privileged in the civil discovery context. The documents being withheld pursuant to Exemption 5 fall under two of the privileges of this exemption: deliberative process privilege and attorney work-product privilege.

The most commonly invoked privilege incorporated within Exemption 5 is the deliberative process privilege, the general purpose of which is to "prevent injury to the quality of agency decisions." Specifically, three policy purposes consistently have been held to constitute the basis for the privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are actually adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action.

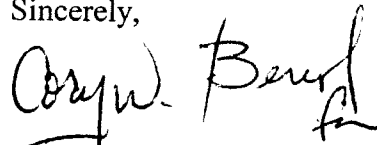
The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. The privilege is not limited to civil proceedings, but rather extends to administrative proceedings and to criminal matters as well. Likewise, the attorney-client privilege protects confidential communication between an attorney and his client relating to a legal matter for which the client has sought professional advice, even though no litigation connection is required.

You may appeal this denial to the National Freedom of Information Officer, U.S. EPA, Records, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460 (U.S. Postal

Service Only), FAX: (202) 566-2147, Email: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, D.C. 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOI case number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Should you have any questions regarding the withheld information or appeal procedure, please contact Priscilla Johnson, FOIA Specialist, Office of Environmental Accountability, at (404) 562-9614. Should you have any other questions regarding this response, please contact Urshula Swann, FOIA Specialist, by email at [swann.urshula@epa.gov](mailto:swann.urshula@epa.gov) or by telephone at (404) 562-8179.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward H. Chu", written over a circular stamp.

Edward H. Chu  
Assistant Regional Administrator

Enclosure

# Index of Withholdings

Freedom of Information Act Request: EPA-R4-2013-006186

Requester: Mr. Marvella Moore

Subject of Request: documents related to Northeast Lagoon site located in Florida that were not previously produced on September 20, 2012.

**\*\*Include records from SEMS.**

DATE OF DOCUMENT	TYPE OF DOCUMENT	FROM:(Name, Title, Organization)	TO: (Name, Title, Organization)	SUBJECT	EXEMPTIONS	# OF PAGES
9/5/2012	Email	Scott Miller, EPA	Urshula Swann, EPA	Northeast Lagoon records search	Deliberative Process Privilege – Exemption 5	17
2/11/2013 and 3/6/2013	Emails	Caroline Philson & Kevin Koporec, EPA	Scott Miller & other EPA addressees	Cabot NE Lagoon records to file	Deliberative Process Privilege & Attorney Work-Product Privilege - Exemption 5	107